

MONTGOMERY COUNTY, STATE OF MARYLAND

**PEGGY BARRY,
LISA BARRY,**

Complainants,

v.

**MONTGOMERY VILLAGE FOUNDATION,
INC.**

Respondent.

Panel Chair Memorandum By: Ursula A. Koenig

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: COMMISSION ON COMMON
: OWNERSHIP COMMUNITIES
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: Case No. 35-07
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: Panel Hearing Date: February 28, 2008
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: Decision Issued: May 28, 2008
: (Panel: Koenig, Huggins, Perlingiero)
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MEMORANDUM DECISION AND ORDER

The above-captioned case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland (the “Commission”), for hearing pursuant to Chapter 10B of the Montgomery County Code 2004, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record and finds, determines and orders as follows:

BACKGROUND

On June 28, 2007, the Complainants, Peggy Barry and Lisa Barry (collectively the “Barrys”) filed a complaint with the Commission related to actions taken by the Respondent, Montgomery Village Foundation, Inc. (“Montgomery Village” or “Foundation”) to remove the siding that the Barrys installed on their home. The Foundation responded by letter dated July 25, 2007 stating that the siding installed on the Barrys’ home was inconsistent with the siding approved by the Foundation. The parties declined to use mediation in this matter. The Commission accepted jurisdiction of the dispute on September 5, 2007 and the matter was

scheduled for hearing before this panel on October 24, 2007. That hearing was continued at the Barrys' request and with the Foundation's consent to February 28, 2008.

At the hearing, the Barrys testified that they installed the siding that was requested in their Property Improvement Request Form ("Application") that they submitted to the Foundation on April 25, 2006. The application had several requests in it, including the replacement of windows, downspouts, trim and a new garage door. The Foundation's witnesses confirmed that the application for the siding was approved, and the approval letter sent to the Barrys on October 5, 2006, stated "The vinyl siding is approved for LP 4 inch vertical siding in the color Clay." The Barrys testified that they received this approval and advised their contractor of the same; although Peggy Barry admitted that she did not read the letter to the siding contractor, she merely advised him that the siding had been approved. Separate letters were sent to the Barrys regarding the remainder of the requests in their Application and none of those items are at issue in this matter.

The Foundation's witness, Judi White, the Architectural Standards Administrator for the Foundation, testified that the siding that was installed on the Barrys' home was not "LP 4 inch vertical siding...." She provided testimony regarding different types of siding, and provided several samples of siding for the panel to examine. She explained that "LP 4 inch vertical siding" is siding with panels that are four inches wide and that "LP" is the specific name that Champion has given to the four inch siding. She then testified that the siding installed on the Barrys' home is called Board and Batten siding which has a 6" board face accented by a 1-5/8" batten which projects 1/2" above the board surface. The Barrys concede that this is the siding that is installed on their home, but aver that this is the siding that was approved by the Foundation. As Peggy Barry stated several times, "What is installed is what was approved." In the alternative, the

Barrys argue that even if this siding is different, there are other homes in the community with siding that is different and as such, the Barrys should be permitted to have this siding on their home.

FINDINGS OF FACT

1. The Respondent was properly served with the Summons and Statement of Charges in this matter and the Commission has jurisdiction over the Respondent.
2. Complainant Peggy Barry is the owner of 19125 Roman Way, Montgomery Village, Maryland and Lisa Barry is a resident of that property. This property is subject to the governing documents of the Montgomery Village Foundation, Inc.
3. Respondent is a Maryland incorporated homeowners association within the meaning of the Maryland Homeowners Association Act, Real Property, Section 11B-101, *et. seq.*, Annotated Code of Maryland.
4. The proposal from Champion, the contractor hired by the Barrys to install the siding, states that the siding is “Premium Double 4 Vinyl Siding” with a handwritten notation that it is vertical siding.
5. The Property Improvement Request Form submitted by the Barrys states that the siding to be installed is “Champion Double-4 vertical siding in Clay” and the approval letter from the Foundation authorizes the installation of Champion LP 4 inch vertical siding in the color Clay.
6. The siding installed on the Barrys’ home is not LP 4 inch vertical siding, which was conceded for the parties, and supported by a letter from Champion which stated that Champion installed LP Maxim Board and Batten Vinyl Siding. It also appears that the siding is

different than the siding that was included in the Wholesale and Retail Contract that Champion gave to the Barrys in July 2006.

7. No evidence was presented alleging that the Foundation has engaged in selective enforcement.

CONCLUSION OF LAW

The Panel agrees with Respondent that the siding installed on the Barrys' home is not the siding that was approved by the Foundation. Notably, the Panel also believes that the siding is different than the siding in the Wholesale and Retail Contract from Champion and that perhaps the Barrys should look into their rights as related to the different siding.

In addition, the Panel finds no legal basis to support an exception to the Barrys in order to justify permitting them to keep the unapproved siding. While there appears to be a handful of homes in the community with siding that is different than the approved four-inch vertical siding, the Foundation's witnesses provided reasonable explanations for each and the Panel saw no indication of selective enforcement.

ORDER

Within 45 days from the effective date of this Order, the Complainants must replace all Board and Batten siding on their home with four inch vertical siding as originally approved by the Foundation.

Commissioners Huggins and Perlingiero concurred in this opinion.

Any party aggrieved by the action of the Commission may file an appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of the date of this Order pursuant to the Maryland Rules of Procedure governing administrative appeals.

Ursula A. Koenig, Panel Chair

